HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPSS No. 1767 of 2004

Km. Mamta Bora
Vs
State of Uttaranchal
& others.

Approved for reporting.

_____
Not approved for reporting

Date of decision 21.4.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1267 (S/S) of 2004

Km. Mamta Bora, Daughter of Sri Diwan Singh Bora,
resident of Chauk-Bazaar, Khetikhan,
Post KhetiKhan .....Petitioner

Versus

1. State of Uttaranchal, through Secretary,
department of Education, Secretariat, Dehradun.
2. Director of Secondary Education,
Uttaranchal, Dehradun.
3. Joint Director of Education,
Kumaon division, Nainital.

.....Respondents

C. D. Bahuguna, Advocate for the petitioner
Standing counsel for the respondents.

Dated: April 21,2006

Hon'ble Rajesh Tandon, J.

Heard Shri C. D. Bahuguna, counsel for the petitioner and the standing counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the advertisement dated 20.10.2004 published by the respondents.

Briefly stated, an advertisement was issued from the office of Joint Director of Education, Kumaun Division, Nainital and the same was published in the Daily issue of the news paper- 'Dainik Jagran' on 20-10-2004. By the said advertisement, applications were invited from the candidates for appointment on the post of L.T. grade teachers in the Government educational Institutions. The last date for applying for appointment as L.T. grade teacher was 09-11-2004.

In the said advertisement, as many as 780 posts of L.T. grade teachers for different subjects were earmarked for Men's Branch and 120 posts were earmarked for Women's Branch. For the post of biology teacher, 92 posts were earmarked for Men's Branch and 12 posts of teacher for Women's Branch. The petitioner applied for appointment as Biology teacher against 92 posts of Men's Brach and also against 12 posts of Women's Brach. The applications, applying for the post of Biology teacher, were sent by registered post on 29-10-2004 and 30-10-2004 and copies of the registry receipts dated 29-10-2004 and 30-10-2004 have been brought on the record of the writ petition by means of Annexure-S.A.-2 to the Supplementary affidavit dated 22-10-2005.

In the present petition, the advertisement dated 20-10-2004 has been sought to be quashed on the ground that certain condition of the said advertisement offends Article 14 and 16 of the Constitution of India. The particular condition, contained in the said advertisement, which has been challenged by the petitioner in matter of appointment, is quoted below:

> iq:"k 'kk[kk ds bu inksa ds fy, dsoy ik= ,oa vgZ iq:"k vH;ZFkhZ ,oa efgyk 'kk[kk ds inksa ds fy, dsoy ik= ,oa vgZ efgyk vH;fFkZuh gh ik= gksxsA

(Means, for the post of teacher in Men's Branch, only men candidates will be eligible to apply for the post and for the post of teacher in Women's Branch only Women candidate will be eligible to apply for the post.)

The counsel for the petitioner has submitted that by virtue of the above mentioned condition of appointment, an arbitrary classification between Male and Female has been carved out in the matter of employment on ground of Sex alone, which is contrary to Article 16 (1) and (2) of the Constitution of India in-as much as Article 16 specifically forbids discrimination in the matter of employment on the ground of religion, race, caste, place of birth, residence or sex alone.

The counsel for the petitioner has further submitted that the number of posts of teacher in L.T. grade for Biology subject for women candidates have been earmarked too less, that is, 12 as compared to number of posts for Men candidates as 92, and since the number of posts earmarked for Women are too less as compared to the posts earmarked for men, the chances of selection and appointment of the petitioner and other women candidates as teacher in L.T. grade, has been substantially reduced.

Article 14 of the Constitution of India provides that the State shall not deny to any person 'Equality before the Law' or the 'Equal Protection of the Laws within the territory of India. Article 15 (1) provides that the State shall not discriminate against any citizen on certain grounds including ***the ground of SEX.*** Article 15 (1) of the Constitution reads as under:

> ***"15 (1).*** *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, residence or any of them."*

The counsel for the petitioner has also referred Article 16 of the Constitution of India which provides that there shall be 'Equality of opportunity for all citizens in maters relating to employment or appointment to any office under the State. Article 16 (1) and (2) of the Constitution of India reads as under:

> *"Article 16-(1)-There shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State.*
> *"(2-) No citizen shall, on grounds only of religion, race, casts, SEX, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."*

According to the counsel for the petitioner, in the present case, the State government has not come forward to disclose any particular object sought to be achieved by providing much higher number of posts of L.T. grade teacher for the Men candidates than the number of posts for the Women candidates except the stand of the government that the number of Government Boys Schools/Colleges are much more than the number of Girls Schools/College in the State. The relevant portion of Para. 11 of the C.A., disclosing the stand of the government, is reproduced to below:

> *"11. ...It is submitted that as per own admission of the petitioner, in Block of a district, 7 to 8 Government Intermediate colleges/Government High Schools and tentatively out of which 1 or 2 Girls Intermediate colleges/ High Schools are running which itself shows that there will be lesser vacancy of the teacher comparatively to the Government Intermediate College/Government High School.....…..."*

The counsel for the petitioner has submitted that the criterion of determining much more vacancies of teachers for Men as compared to women in the educational Institutions is only on the basis of number of Government Boys Schools/

Colleges in the division or district, is not a valid criterion, in-as-much as it violates Article 16 of the Constitution of India, particularly when the pattern of imparting education, is co-education in such Government Boys Schools/ Colleges, where girls students also get education equally.

The counsel for the petitioner has submitted that Co-education system was prevalent in educational Institutions of secondary level in the erstwhile State of Uttar Pradesh, and the State of Uttaranchal being carved out from the territory of the Parent State of the Uttar Pradesh, adopted the same education pattern of Co-education in the educational Institutions in the State of Uttaranchal. The respondents have admitted about pattern of imparting education as co-education, in the educational Institutions of secondary level, in Para.11of their Counter-affidavit. The relevant portion of Para. 11 of the C.A. is reproduced to below:

"11 …….. immaterial of the fact that ***in other Government Intermediate colleges or High Schools, boys and girls are getting their co-education*** *but the teacher from men category only shall be posted in such Government High Schools or Government Intermediate Colleges……"*

In the present writ petition, the respondents have taken a plea in Para. 3 (B) of the Counter-affidavit to the effect that impugned advertisement dated 22-10-2004 was issued as per the provisions of the relevant Rules, namely, "U.P. Subordinate Educational (Trained Graduate) Service Rules, 1983, and in Chapter 5 of the said Rules, service group cadre as Male and Female has been specifically divided.

To conveniently appreciate the controversy involved in the present matter, Rule 4 of the "U.P. Subordinate Educational

(Trained Graduate) Service Rules, 1983 (hereinafter referred to as the Trained Graduate Service Rules,1983), as adopted by the State of Uttaranchal and as contained in PART-II of the said Rules, can be reproduced to below:

PART-II

CADRE

4. Cadre of service-(1).There shall be regional cadre both for men and women branches.

(2).The **strength of service and of each category** of posts therein shall be such **as may be determined by the Government from time to time**

(3).The **strength of service and of each category** of posts therein shall **until orders varying the same are passed under sub-rule (2)** be as given in Appendix 'A' (in respect of Men's Branch) and Appendix 'B' in respect of Women Branch):

The Appendix 'A' (in respect of Men's Branch) and Appendix 'B' in respect of Women Branch as available in the Trained Graduate Service Rules,1983, can be reproduced for convenient sake, in the following manner:

APPENDIX 'A'

(Men's Branch)

(a) Strength of U.P. Education (Trained Graduates Grade) Service (General Branch)

Designation of post		*Number of posts*		
		Permanent		*Temporary*
1		*2*		*3*
Assistant Master (L.T. Grade)		**1492**	**2704**	**=4196**
Craft Teacher (Work experience)	Male	,,		62
	Female	,,		10
Asstt. Agriculture Teacher (Work experience)		,,		142

Craft Teacher:

Reorientation	1. Male	45		,,
	2. Female	,,		
Non-Plan	1. Male	,,		30
	2. Female	,,		15
Extension Teacher			737	
263				
Craft Technician		1		,,

(Men's Branch)

(b) Break-up of Trained Graduates Grade Service-General Branch:

Name of the Region	*Number of posts*
*Pauri- Garhwla Region..	1,218
***Nainital Region** ..	**1,107**
Meerut Region	155
Agra Region	160
Bareilly Region	336
Lucknow Region	195
Allahabad Region	208
Varanasi Region	282
Jhansi Region	235
Gorakhpur Region	116
Faizabad Regio	184
Total No. of posts	**4,196**

APPENDIX 'B'

(Women's Branch)

(a)Strength of U.P. Educational (Trained Graduates

Grade)

Designation of posts	*Number of Posts*	
	Permanent	*Temporary*

1	2	3
Assistant Mistress:		
L.T. Grade (Women's Branch) 964		
933= 1897		

(b) Break-up of Trained Graduates Grade Service (Women's Branch)

General Branch

Name of Region	*Number of posts*
*Pauri-Garhwal Region	173
***Nainital Region..	209**
Meerut Region	194
Agra Region	129
Bareilly Region	181
Lucknow Region	186
Allahabad Region	141
Varanasi Region	177
Jhansi Region	174
Gorakhpur Region	157
Faizabad Regio	176
Total No. of posts	**1,897**

The counsel for the petitioner has submitted that the strength of service in each category, i.e. in Men's category (Branch) and in Women's category (Branch) in whole of the state of U.P. has been determined as 4196 and 1897 on the basis of the number of Girls schools/colleges and Boys schools/colleges existing in the State of U.P. on the date of issuance of the Trained Graduate Service Rules, 1983. Similarly, the strength of service in Men's category (Branch) and in Women's category (Branch) in district Nainital has been determined as 1107 and 209 on the

basis of the number of Girls schools/colleges and Boys schools/colleges existing in district Nainital on the date of the issuance of the Trained Graduate enforcement of the Service Rules of 1983.

According to the submission of the counsel for the petitioner, the terms contained in sub-rule (3) of Rule 4 of the Service Rules of 1983, namely, **"The strength of the service'** and '**of each category of posts therein'** require interpretation.

As per submission of counsel for the petitioner the term- '**The strength of the service**' means the total number of sanctioned posts of teachers for Government Schools/Colleges, irrespective of it being a Govt. Boys Schools/colleges or Govt. Girls Schools/colleges and the another term- 'of each category of posts therein, means the number of posts earmarked for Men's category (Branch) and Women's category (Branch). And in other words, it means- the number of posts earmarked for Govt. Boys Schools/Colleges and for Govt. Girls Schools/Colleges.

The counsel for the petitioner has submitted that the strength of Men's category or Men's Branch means the number of teachers to be appointed in Men's School/Colleges and it does not mean that only male teachers have to be appointed in Men's Schools/Colleges, and that female teachers can not be appointed in Men's Schools/Colleges, on the ground that the School/College is named as Govt. Boys School/College. The learned counsel for the petitioner has further submitted that any post of teacher in any Govt. Boys School/College may not be said to be belonging to or reserved for the male gender only, to the total exclusion of female gender. According to the learned counsel, if Rule 4 of the Trained Graduate Service Rules, 1983 is

interpreted in the manner that any female/woman candidate can not apply against the vacant post of teacher in any Govt. Boys School/College, imparting co-education, the entire Rule 4 of the Trained Graduate Service Rules, 1983 would be rendered ultra vires of Article 14 and 16 of the constitution of India, as it would mean to promote discrimination in matter of employment on ground of Sex only amongst Men and Women candidates.

According to the learned counsel for the petitioner, the decision of the government for appointment of only women teachers in Govt. Girls Schools/ colleges, to the exclusion of the men teachers, may be justified, on the ground that the pattern of imparting education in such Schools/Colleges, is not based on co-education and girls students get education there exclusively, but as regards Govt. Boys Schools/Colleges, the pattern of imparting education in such Schools/Colleges, being based on co-education, where both girls and boys students get education, a female/woman candidate, desirous of appointment for the post of teacher in the Govt. Boys School/College, can not be denied appointment as a teacher only on the flimsy ground that all the posts of teacher in the Govt. Boys Schools/colleges have to be filled-up only by male/men candidates.

I find substance in the submission of the learned counsel for the petitioner to the effect that merely by categorizing Men's Branch for purpose of appointment as teacher in Men's (Boys) Schools/Colleges, may neither mean reservation for appointment of men teachers only in such schools/colleges nor may mean exclusion of women candidates from applying for the post of teacher in such Schools/colleges, otherwise the equality clause contained in Article 14 and non-discrimination clause, based on sex only, contained in Article 16 of the Constitution of

India would be breached and violated, particularly in view of the fact, as has been admitted by the respondents in their Counter-affidavit, that co-education pattern is prevalent in the Govt. Boys School/Colleges at the level of Secondary Education in the State of Uttaranchal.

The learned counsel for the petitioner has submitted that this court may take cognizance of the fact that in Basic Schools run by the Board of Basic Education of the Government of Uttaranchal, both male and female persons are appointed as teachers and that is why in the B.T.C. training course, both male and female candidates may apply for training and both are selected for training without any discrimination. The learned counsel, in support of his submission, has referred a copy of advertisement of B.T.C. training course, issued by the Board of Basic Education of the State of Uttaranchal, contained in Annexure-10 to the writ petition.

The submission of the counsel for the petitioner is correct to the effect that in Basic Schools run by the Board of Basic Education of the Government of Uttaranchal, both male and female persons are appointed as teachers. This court is very well conscious of this fact also that both male and female candidates are appointed as lecturers, without any discrimination, in the post graduate colleges of the State of Uttaranchal and the State of U.P. both.

The counsel for the petitioner has submitted that the Trained Graduate Service Rules of 1983 enacted by the legislature of the Govt. of Uttar Pradesh, has been adopted by the Government of Uttaranchal in its existing form. According to the submission of the counsel for the petitioner, the Department of Education of the State of U.P. has not been restraining the

woman candidates from applying against the posts of teachers of Men's Branch or in other words has not been disentitling the women candidates from applying for the post of teacher in any Govt. Boys School/College, but the Department of Education of the State of Uttaranchal has been misinterpreting it. The counsel for the petitioner has referred a copy of advertisement dated 30-09-2004 issued by the Department of Education of the State of U.P., which is enclosed as Annexure-S.A.-1 to this Supplementary affidavit dated 23-10-2005. The respondents have filed a supplementary counter-affidavit against the Supplementary affidavit of the petitioner dated 23-10-2005 and the respondents have though vaguely denied it but have not specifically and categorically denied the fact of issuance of the advertisement dated 30-09-2004 by the Department of Education of the State of U.P. In the advertisement dated 30-09-2004, the Department of Education of the State of U.P. has advertised separate number of posts of teachers for Men's Branch and Women's Branch but it has been specifically provided in the advertisement that Female/Women candidates will be entitled for applying for appointment in Men's Branch and Women's Branch both. The relevant portion of the advertisement is reproduced to below:

efgyk vH;Fkh ckyd ,oa ckfydk nkuk oxZ
dh fo|ky;k dh fy, ik= gSA

The learned counsel for the petitioner has submitted that since the Parent State, namely, the State of Uttar Pradesh has not been interpreting the provisions of the Trained Graduate Service Rules, 1983, in such manner which may disentitle a woman/female candidate from applying against the post of teachers in Men's Branch, i.e. in any Govt. Boys School/College, the State of Uttaranchal may not have any authority in law to interpret the same provision in its own arbitrary manner.

I find force in the submission of the learned counsel for the petitioner. The legislature of the Government of U.P. in view of Article 16 of the Constitution of India, was conscious of this fact, that women candidate can not be denied appointment in such Govt. Boys Schools/Colleges, where the pattern of imparting education is based on co-education, and that is why, no specific provision was inserted/enacted in the Trained Graduate Service Rules, 1983 to disqualify the women candidates from applying for the post of teacher in such Govt. Boys schools/colleges.

The learned counsel for the petitioner has further submitted that in the year 1976, the Central Legislature passed a legislative Act, known as –'***The Equal Remuneration Act, 1976***' (Act no.25 of 1976). In the '**Statements Objects And Reasons'**, of the said Act, the following is mentioned:

> *"Article 39 of the Constitution of India envisages that the State shall direct its policy among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the President promulgated on the 26th September 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the Constitution may be implemented in the year which is being celebrated as the International Women's year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on ground of sex.*
>
> *The Ordinance also ensured that there will be no discrimination against recruitment of women and*

provides for the setting up of Advisory committees to promote employment opportunity for women..

3. This Bill seeks to replace the Ordinance. –S.O.R.- Gaz. of Ind., 6-1-76, Pt, II, S.2, Ext., p. 128.

The Equal Remuneration Act, 1976 (Act no. 25 of 1976), provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto."

The learned counsel for the petitioner submitted that in Section 4 of the Act no. 25 of 1976, a duty has been imposed on the employer to pay equal remuneration to men and women workers for same work or work-of-a-similar nature. The learned counsel referring Section 5 of the Act, has submitted that it has been provided by the Central legislature that no discrimination shall be made in matter of recruitment of woman on ground of sex. Section 5 of the Act reads as under:

> ***"5. No discrimination to be made while recruiting men and women workers:-*** *On and from the commencement of this Act,* ***No employer, shall, while making recruitment for the same work of a similar nature or in any condition of service subsequent to recruitment such as promotion, training or transfer, make any discrimination against a women*** *except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force".*

In view of the provision contained under Section 5 of the Act no 25 of 1976, the learned counsel for the petitioner has submitted that the Department of Education of the Government of Uttaranchal has not only acted in violation of Article 14 and 16 of the Constitution of India but has also acted against the

statutory provision as contained under Section 5 of the Act no. 25 of 1976 by denying equal opportunity for the women candidates for appointment as against all existing vacancies of the post of teachers, and therefore, the impugned advertisement, promoting discrimination on ground of sex, vitiates on this ground alone.

The learned counsel for the petitioner has also referred Section 6 of the said Act no. 25 of 1976, wherein a duty has been imposed on every State Government to constitute advisory committee so as to identify the employments where women can be provided appointment and whereby employment opportunities may be increased for the women. Section 6 (1) of the said Act of 1976 reads as under:

> ***"6. Advisory Committee-For the purpose of providing increasing employment opportunities for women, the appropriate government shall constitute one or more advisory committees*** *to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf."*

The learned counsel for the petitioner has submitted that on one hand the Central legislature has imposed a legal duty on every State Govt. to identify employments where women can be provided appointment and to increase employment opportunities for the women in all establishments and departments, whereas on the other hand, the Department of Education of the State of Uttaranchal has been exercising it's vigor to snatch employment opportunity from the women candidate like the petitioner. According to the counsel, this action of the Department of Education of the State of Uttaranchal deserves to be set at naught and deprecated.

I find force in the submission of the counsel for the petitioner and, therefore, hold that the action of the Department of Education of the State of Uttaranchal in denying equal opportunity to the woman candidates, like the petitioner, for appointment on the post of L.T. grade teacher, is not only violative of Article 14 and 16 of the constitution of India but is also violative of Section 5 and 6 of the "The Equal Remuneration Act, 1976'.

The learned counsel for the petitioner has referred and relied a judgment of the Allahabad High Court in the case- **Smt. Urmila Devi Vs. State of U.P. and another, reported in 1999 All. Law Reports –689.** The Allahabad High court, while dealing with some similar controversy, where a women was being denied a right to apply for a class-III post, under the provisions of Civil courts Ministerial Rules, 1947, held that it was unconstitutional to deny an opportunity for a woman to apply for any particular post on ground of sex alone, as it would be violative of Article 16 of the Constitution of India. The relevant para.5 of the judgment is reproduced to below:

> *"5. The above Article 16 (2), therefore, specifically lays down that a person shall not be ineligible for the employment to any post merely on the ground of sex. The impugned order disentitled the women for appointment to the ministerial establishment of the Civil court subordinate to the High Court. This order is clearly violative of ARTICLE 16 (2) of the Constitution of India and as such is ulra vires. The consequential communication issued by the District Judge dated 5th April, 1990 is also, therefore, invalid"*

According to the counsel for the petitioner, in the present case, the question involved is a bit different. Here, the petitioner has not been totally denied for appointment for the

post of L.T. grade teachers but *she has been discriminated on ground of sex alone, in-as-much as she has not been provided equal opportunity like male candidates for appointment as against other 92 posts of Biology teachers.* The petitioner and other women candidates have been permitted to seek appointment only as against 12 posts of Biology teachers, as a result of which, the chances of selection of the petitioner and other women candidates as Biology teacher, have been substantially reduced.

The learned counsel for the petitioner has referred and relied an another judgment rendered in a well known case-Air India Vs. Nergesh Meerza and Ors. Reported in AIR 1981 SC-1829, where the Apex Court elaborated the scope of Article 14 of the Constitution of India, in the following words:

> ***"26.....It is undisputed that what Article 14 prohibits is hostile discrimination and not reasonable classification.*** *In other words, if equals and unequals are differently treated, no discrimination at all occurs so as to amount to an infraction of Article 14 of the Constitution. A fortiori,* ***if equals or persons similarly circumstanced are differently treated, discrimination results so as to attract the provisions of Article 14."***
>
> *27. In our opinion, therefore, the inescapable conclusion that follows is that if there are two separate and different classes having different conditions of service and different incidents, the question of discrimination does not arise.* ***On the other hand, if among the members of the same class, discriminatory treatment is meted out to one against the other, Article 14 is doubtless attracted.***

The learned counsel for the petitioner has referred and relied an another judgment in the case-**Maneka Gandhi v.**

Union of India, reported in AIR 1978 SC 597, where the Constitution Bench of the Apex court observed as follows:

> *"……..Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence…… It must be "right and just and fair" not arbitrary, fanciful or oppressive;*

In an another **Constitution Bench** decision rendered in the case- **E.P. Royappa v. State of Tamil Nadu, reported in (1974) 4 SCC 3,** somewhat similar observations were made by the Apex Court, which is quoted to below:

> *"In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14."*

On the question of discrimination on the ground of sex, the learned counsel for the petitioner has again referred and relied the case- _Air India Vs. Nergesh Meerza and Ors, reported in AIR 1981 SC –1829 (supra), wherein following observation was made by the Apex court in para.66 of the judgment:

> *"66. Even otherwise, what Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and only on the ground of SEX.*_These articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations..."

In Para. 91 of the aforesaid case, the Apex court further observed the following:

"91. Similarly, very pregnant observations were made by the U.S. Supreme Court in City of Los Angeles Department of Water & Power v. Marie Manhart [55 L Ed 2d 657: 435 US 702 (1978)] thus:

> "..... . *Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals, or for paying them less... The question, therefore, is whether the existence or nonexistence of "discrimi- nation" is to be determined by comparison of class characteristics or individual characteristics. A 'stereotyped' answer to that question may not be the same as the answer that the language and purpose of the statute command.*"

The learned counsel for the petitioner has also relied certain observation of the apex court rendered in the case - Miss C.B. Muthamma v. Union of India [(1979) 4 SCC 260: A.I.R. 1979 SC 1868] where Krishna Iyer, J. speaking for the Court made the following observations in Para 7 of the judgment:

> "*We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may couple selectivity. But save where the differentiation is demonstrable, the rule of equality must govern.*"

The learned counsel for the petitioner has also relied certain observation of the Apex court rendered in the case Certain observation of the Apex court rendered in the case- Uttarakhand mahila Kalyan Parishad and others Vs. State of Uttar Pradesh, reported in A.I.R. 1992 SC-1695-, has also been relied by the counsel for the petitioner, wherein the Apex court observed that Constitution of India does not permit differential treatment between male teacher and female teacher in matter of availing promotional avenues. The relevant portions of Para. 1 and 4 of the judgment are reproduced to below:

"1.Grievance has been made in this petition under Article 32 of the Constitution that the lady teachers and other female employees in the educational line doing administrative business in employment of the Staff, of Uttar Pradesh are being discriminated against, inasmuch as while they are called upon to do the same work as their counterparts (male teachers and officials), they are paid a lower scale of salary and avenues of promotion are not open to them in the same proportion as available to the male teachers and employees

4.We have heard the submissions made on either side and are of the view that under the constitutional, arrangement there is no occasion for a differential treatment between male teachers and employees and lady teachers and employees in the education department doing administrative business, when they are doing the same job. Nor do we find any justification for a preferential treatment in the matter of affording promotional avenues for the male teachers. While we direct by mandamus that the State of Uttar Pradesh shall equate the pay scales with effect from 1-10-1991, ***so far as the creation of promotional avenues is concerned, we direct the State of Uttar Pradesh to have this examined by an appropriate Committee within two months and give additional promotional avenues to the lady teachers*** *and other employees in the educational line doing administrative business so that their grievance as raised in this petition is properly met……."*

The counsel for the petitioner has submitted that the Constitution Bench of the Apex Court in the case – ***S.P. Sampath Kumar Vs. Union of India, reported in A.I.R. 1987 SC 386*** has held that even the Parliament or Legislature of State cannot legislate such law, which may affect adversely the *'Basic Structure of the Constitution'.*

The counsel for the petitioner has further submitted that in the case-***Kailash Chandra Sharam V. State of Rajeshthan, & ors. , reported in 2002 (5) Supreme 425,*** the Apex court held that in matter of appointment of Primary school teachers, if bonus marks is given to any

candidate on ground of his being a 'resident' of any particular district or rural areas, it would violate Article 14 and 16 (2) of the Constitution of India, meaning thereby, the discrimination on ground of ***'residence'*** alone would not be permissible in law.

The learned counsel for the petitioner has submitted that no written examination is held for selection of L.T. grade teachers, and the candidates are selected on the basis of quality points. The counsel further submitted that quality points are awarded to the candidates on the basis of the percentage of marks obtained by them in their academic examinations and training examination; and the method of calculation of quality points, is prescribed in Appendix-'D' of the Trained Graduate Service Rules of 1983. The counsel also submitted that the result of Selection of L.T. Grade teachers was declared in the Daily news Paper, namely, 'Dainik Jagran' on 09-09-2005 and the candidates belonging to the Men's Branch who secured 65.76 quality points in Kumoun region and 67.32 in Garhwal region, have been selected for appointment as Biology teacher. A copy of result of Selection of L.T. Grade teachers, disclosing quality points for selection, published in the News Paper, 'Dainik Jagran' dated 09-09-2005 has been enclosed with the Supplementary affidavit as Annexure S.A-4.

The counsel also submitted that the petitioner secured 76.85 quality points and a chart has been enclosed with the Supplementary affidavit as Annexure-S.A.-3, showing the quality points secured by the petitioner. The counsel has submitted that despite securing 76.85 quality points, the petitioner has not been declared selected for appointment on the post of Biology teacher

The counsel for the petitioner has submitted that if the candidature of the petitioner had been considered for Men's Branch, i.e., for boys Schools/ Colleges, she would have certainly been selected as Biology teacher because the quality points obtained by her, is much higher than the quality points obtained by a number of Men candidates.

This Court on 23-12-2004 passed an interim order to the effect that any appointment made in pursuance of the advertisement dated 20-10-2005 shall be subject to the final decision of the Writ petition. In view of the above interim order, the respondents can be directed to re-consider the candidature of the petitioner and pass an appropriate order for selection/ appointment of the petitioner as an L.T Grade teacher in Biology subject as against any vacant post available in any educational Institution situated within the State of Uttaranchal.

Since selection on the post of teachers has already taken place by now, pursuant to the impugned advertisement, this court does not prefer to quash the entire selection of teachers and prefers to pass an appropriate order for safeguarding the interest of the petitioner and, therefore, I decline to interfere so far as prayer no. 1 is concerned.

However, a writ in the nature of Mandamus is issued commanding the respondents to consider the candidature of the petitioner and pass an appropriate order for selection/appointment of the petitioner as an L.T. grade teacher in Biology subject on any vacant seat within a period of one month after obtaining certified copy of this order.

Subject to the observations made above, writ petition is allowed. No order as to costs.

Date: April 21, 2006 **Rajesh Tandon, J.**

*Dhyani